

FILED

SEP - 4 2018

Clerk, U S District Court
District Of Montana
Billings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN HENRY SCHNEIDER,

Defendant.

CR 17-77-BLG-SPW

ORDER

Before the court is Defendant's application for stay of sentence pending appeal to the Ninth Circuit Court of Appeals. (Doc. 50). The government objects to the application and argues that it does not raise a substantial question of law or fact likely to result in a reversal or other sentence reduction. (Doc. 53). The court agrees.

I. Discussion

Requests by a defendant to stay a sentence of incarceration pending appeal are governed by 18 U.S.C. § 3143(b). Under that section:

(b) Release or detention pending appeal by the defendant.--(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a

writ of certiorari, be detained, unless the judicial officer finds –

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

Because the defendant's only objection is a claim of ineffective assistance of counsel, the court determines that the defendant does not qualify for a stay under 18 U.S.C. § 3143(b)(1)(B). By signing his appeal waiver, Defendant is procedurally barred from pursuing an appeal to the Ninth Circuit. Accordingly, Defendant's claim cannot result in a reversal or reduced sentence.

II. Conclusion

The court finds that Defendant's application fails to raise a substantial question of fact or law and has been filed purely for delay purposes. Accordingly, Defendant's application is DENIED.

DATED this 4th day of September, 2018.


SUSAN P. WATTERS
U.S. DISTRICT JUDGE